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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 326

JAMES F. DOBBS,
Petitioner,

versus

LYKES BROS. STEAMSHIP COMPANY, INC.,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ANDREW R. MARTINEZ,
EDWARD S. BAGLEY,
Proctors for Respondent

TERRIBERRY, YOUNG, RAULT & CARROLL
Of Counsel

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MAY IT PLEASE THE COURT:

The petition for a writ of certiorari herein seeks to have the decree of the lower courts "modified to the extent of protecting and preserving petitioner's rights to whatever future maintenance and cure he may be entitled." The utter lack of substance in the relief sought is demonstrated best by the fact that no such "modification" was sought at any time in the courts below. It is entirely unnecessary and would be improper, as a matter of law and fact.

THE FACTS

We will not endeavor to review fully the facts which are set forth in the findings of the District Court, Appendix A to the petition.

The courts below found that petitioner had received the maximum benefits available from medical treatment for his illness when he left the United States Public Health Service Hospital and, in fact, was fit to return to a gainful occupation.[1] This was a recovery both from his kidney disease and from the nervous or emotional disturbance which the psychiatrists at the United States Public Health Service Hospital found to be a manifestation of the forces exerted upon him by his mother as a result of their *Oedipus* or "mother-son" complex.[2]

The petitioner, however, now suggests that "he attempted to obtain private medical attention which was not available to him while he was under treatment by the Public Health Service." As noted in the opinion of the Court of Appeals, "*it is without dispute* that during that period (*i. e.* the period of his treatment by the Public Health Service) he received unusually skillful, competent and diligent treatment and attention." (Italics and parenthetical expression ours). Further, as found by the District Court (which findings petitioner specifically does not seek to have this Honorable Court review or re-examine), "all necessary and proper treatment required by him was at all times available" at the United States Public Health Service Hospital[3]

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[1]Finding of Fact XXIV.
[2]Findings of Fact XI, XII and XIII, Exhibits, Lykes 13, 14 and 15.
[3]Finding of Fact XXIX.

and "such treatment had at all times been of the highest order."[4]

The proof was clear that any nervous or emotional disturbance experienced by petitioner after the trial of this case resulted not from the kidney disease but from the influence exerted by his mother, as reflected in the findings of the psychiatrists at the United States Public Health Service Hospital and of the Trial Court.[5] The unsworn, *ex parte*, letters purportedly signed by a physician who first saw the petitioner some eighteen months after he left the United States Public Health Service Hospital and some four months after the trial of this cause, which were not admitted in evidence, cannot change these facts. As stated by the Court of Appeals, there was "no suggestion from any of the physicians who testified at the trial that the appellant was not then, and at the time of his discharge from the marine hospital, fully in possession of his mental faculties." The fact that the petitioner apparently experienced a mental or emotional disturbance some four months after the trial can only attest to the accuracy of the findings of the psychiatrists at the United States Public Health Service Hospital who felt that it was imperative that the petitioner remove himself from the influence of his mother.

ARGUMENT

The decision upon which the petitioner relies, *Farrell v. United States*,[6] affirmed the judgment of the lower court which had denied maintenance and cure beyond the date

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[4]Finding of Fact XXVI.
[5]Footnote 2, *supra*.
[6]336 U. S. 511, 93 L. Ed. 850, 69 S. Ct. 707, 1949 A.M.C. 613.

when the seaman had reached a condition of maximum cure. The Honorable Court, in its affirmance, added:

> " * * * The Government does not contend that if Farrell receives future treatment of a curative nature he may not recover in a new proceeding the amount expended for such treatment and for maintenance while receiving it."

The decree of the lower court was affirmed without modification. There is no doubt but that any further right to claim maintenance and cure which the seaman in the *Farrell* case thereafter might have had was fully reserved to him despite the decree of the lower courts. No need for modification of the decree existed there and there is no need or justification for such modification here.

A decree dismissing a libel for maintenance on the ground that the seaman has reached maximum recovery does not preclude his right to further maintenance, in a proper case, where new medical treatments for the conditions involved are developed and the seaman is otherwise entitled to the relief sought. As this Honorable Court has said, the duty to provide maintenance and cure is a continuing one and judgments covering future maintenance are not permitted except for definitely ascertainable future periods.[7]

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[7] *Calmar Steamship Corporation v. Taylor*, 303 U. S. 525, 82 L. Ed. 993, 58 S. Ct. 651, 1938 A.M.C. 341.

CONCLUSION

The libel dismissed by the Trial Court's decree herein, affirmed by the Court of Appeals, correctly held that the petitioner had reached a stage of maximum possible cure at the time of his discharge from the United States Public Health Service Hospital. Any well-founded right which petitioner, in fact, might have to claim further maintenance and cure subsequent to the date of the trial was not precluded by the decree of dismissal, as a matter of law, and no need or justification for it's modification exists.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, being a member of the Bar of the Supreme Court of the United States do hereby certify that I have this day served a copy of the attached brief upon the proctors for petitioner by depositing the same in the United States mail, postage prepaid, at New Orleans, Louisiana, addressed to Raymond H. Kierr, Esquire and Samuel C. Gainsburgh, Esquire, 1746 National Bank of Commerce Building, 210 Baronne Street, New Orleans 12, Louisiana.

August _____, 1957.

Andrew R. Martinez